

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HALINA M. BONAU and DEPARTMENT OF VETERANS AFFAIRS,
SAN FRANCISCO VETERANS HOSPITAL, San Francisco, CA

*Docket No. 01-1595; Submitted on the Record;
Issued May 14, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issues are: (1) whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant, a 47-year-old registered nurse, filed a notice of traumatic injury on November 15, 1988 alleging that on November 14, 1988 she injured her right shoulder and arm in the performance of duty. The Office accepted her claim for right shoulder strain, cervical radiculitis, herniated disc with myelopathy, discectomy and bone graft and secondary depression. By decision dated March 21, 2000, the Office granted appellant schedule awards for 17 percent permanent impairment of each of her upper extremities. Appellant requested an oral hearing in a letter received by the Office on April 27, 2000. By decision dated June 6, 2000, the Branch of Hearings and Review denied appellant's request as untimely. Appellant requested reconsideration on March 20, 2001. By decision dated April 16, 2001, the Office declined to reopen appellant's claim for consideration of the merits.

The Board finds that the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely.

Section 8124(b) of the Federal Employees' Compensation Act,¹ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."²

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8124(b)(1).

The Board has held that section 8124(b)(1) is “unequivocal” in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.³ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing, and must exercise this discretion.⁴

In the instant case, the Branch of Hearings and Review properly determined appellant’s April 20, 2000 request for a hearing received by the Office on April 27, 2000 was not timely filed as it was filed more than 30 days after the issuance of the Office’s March 21, 2000 decision. The Office, therefore, properly denied appellant’s hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical in nature and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant’s request for a hearing as untimely and properly exercised its discretion in determining to deny appellant’s request for a hearing as she had other review options available.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant’s claim for consideration of the merits.

The Office’s regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.⁵

In this case, the Office granted appellant schedule awards for permanent impairment of her upper extremities due to her accepted back condition. Appellant requested reconsideration of this decision on March 20, 2001. She stated in her reconsideration request that she was attempting to obtain a referral from her attending physician. Appellant did not submit any new evidence nor did she advance a relevant legal argument not previously considered by the Office. As she failed to comply with the Office’s requirements for merit review, the Office properly denied her request for reconsideration.

³ *Tammy J. Kenow*, 44 ECAB 619 (1993).

⁴ *Id.*

⁵ 5 U.S.C. § 10.606(b).

The April 16, 2001 and June 6, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 14, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member